

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GREGORY D. ADAMS,

Plaintiff,

V.

CORRECTIONS OFFICER RAYGOR,
et al.,

Defendants.

3:23-CV-53

MEMORANDUM ORDER

This *pro se* prisoner civil-rights case was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court applicable to Magistrate Judges.

Mr. Adams filed a complaint on March 23, 2023, (ECF 1) and a motion for leave to proceed *in forma pauperis* on May 17, 2023. ECF 3. Judge Pesto denied Mr. Adams's motion to proceed IFP and ordered him to pay the filing fee, which Mr. Adams elected not to appeal. ECF 6. On October 10, 2023, Mr. Adams paid the filing fee and his complaint was docketed. ECF 10; ECF 11. On October 12, 2023, Judge Pesto issued an order reminding Mr. Adams of his duty to serve his complaint on Defendants and stating that if Mr. Adams didn't serve Defendants by January 31, 2024, or file a motion for the U.S. Marshal's office to serve, his complaint would be dismissed without prejudice, pursuant to Rule 4(m). ECF 12. Mr. Adams did not file a proof of service and on April 24, 2024, Judge Pesto issued a Report & Recommendation recommending that Mr. Adams's complaint be dismissed without prejudice for failure to serve. ECF 17.

The parties were notified that, pursuant to 28 U.S.C. § 636(b)(1), objections to the Report & Recommendation were due by May 8, 2024, or May 13, 2024 for

unregistered ECF users. *Id.* Mr. Adams filed objections on May 6, 2024. ECF 18. Because Mr. Adams has objected to Judge Pesto's Report & Recommendation, the Court reviews it *de novo*. 28 U.S.C. § 636(b)(1).

Mr. Adams argues in his objections that he thought he had complied with the Court's order directing him to serve Defendants by sending them waivers of service by certified mail. ECF 18. While Judge Pesto was correct in his initial assessment of this case, based on Mr. Adams's objections, the Court finds that the more efficient approach at this juncture than dismissal would be to allow Mr. Adams additional time to serve. Therefore, the Court will modify the R&R, construe Mr. Adams's objections as a motion to extend the time for service, and grant the motion.

Under Rule 4(m), a Court must dismiss an action if a defendant is not served within 90 days after the complaint is filed. Fed. R. Civ. P. 4(m). "But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." *Id.* Here, Mr. Adams has shown good cause for his failure to serve by showing that he requested a waiver of service from Defendants by sending them the waiver of service forms by certified mail. ECF 18-1.

The Court is aware that defendants in these types of cases are typically represented by the Pennsylvania Office of the Attorney General. To try to put this service issue to bed, Mr. Adams must mail one copy of his complaint, nine waiver of service forms (one for each defendant), one prepaid and addressed envelope for return of the signed waivers to Mr. Adams, and a copy of this Order to the following address, by **March 21, 2025**:

Pennsylvania Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222

If Defendants waive service, Mr. Adams must file the signed waivers after he receives them. If Mr. Adams does not receive signed waivers back from all Defendants within 60 days of mailing, he must file a notice informing the Court of this.

Defendants are reminded that if they do not waive service, they will very likely be required to pay for the costs of service under Rule 4(d)(2).¹

AND NOW, this 18th day of February, 2025, it is hereby **ORDERED** that Judge Pesto's Report & Recommendation (ECF 17) is **MODIFIED** as noted above. **IT IS FURTHER ORDERED** that Mr. Adams's motion to extend the time for service (ECF 18) is **GRANTED**, and Mr. Adams shall follow the Court's instructions herein.

BY THE COURT:

/s/ J. Nicholas Ranjan
United States District Judge

cc:
Gregory D. Adams
MG9469
SCI Laurel Highlands
5706 Glades Pike
P.O. Box 631
Somerset, PA 15501

¹ If Mr. Adams did appropriately mail the waiver forms to Defendants (and it appears that he did), then it would seem that Defendants are just playing games here with an incarcerated plaintiff, and the Court would be inclined to order that they pay costs for service.